

REMARKS

Claims 1-11 and 14-15 are pending in this application. Non-elected claims 16, 17 and 18 are hereby withdrawn from consideration without prejudice or disclaimer to the subject matter thereof. Claim 21 is hereby cancelled without prejudice or disclaimer to the subject matter thereof.

Claims 1-3, 5 and 10 are currently amended. No new matter is added. Support for the amendments is found in the claims as originally filed and the Specification generally.

Election

The Examiner has restricted examination of the application under 35 U.S.C. § 121 to one of four groups (See Office Action mailed May 7, 2003 at 2-4). Applicant hereby confirms the provisional election of Group I, claims 1-11 and 14-15. Non-elected claims 16, 17 and 18 are hereby withdrawn from consideration without prejudice or disclaimer to the subject matter thereof.

Information Disclosure Statement

Applicant submits herewith an Information Statement, PTO-Form 1449, and MPEP 609D.

Applicant wishes to draw the Examiner's attention to the following included items: (1) The MPEP 609D includes a copy of an Office Action received in U.S.S.N. 10/049,038 to which the instant application claims priority as a continuation-in-part application. (2) The MPEP 609D and PTO-Form 1449 include Published Application for U.S. Patent 2002/0010177 (A1), which relates in family to EP 0987265 (a MicroPatent® Family Lookup is also included). (3) The MPEP 609D

and PTO-Form 1449 include Published Application for U.S. Patent 20020042416 (A1).

Claim Rejections – 35 U.S.C. § 112

Claims 1-11 and 14-15 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. (Office Action mailed May 7, 2003 at 4-5).

Specifically, the Examiner states:

In claim 1, recitation of the phrase "N-oxides, the pharmaceutically acceptable salts and the stereochemically isomeric forms thereof" renders this claim indefinite as it is not clear whether the claim is compound claim or composition claim. Note Markush choices are not in alternate form and choices are also in plural. Replacement of the said phrase" with "N-oxide, pharmaceutically acceptable salt or stereochemically isomeric form thereof " would obviate this rejection.

(Office Action dated May 7, 2003 at 5).

Applicant has amended claim 1 in the manner suggested by the Examiner.

~~Accordingly, Applicant the rejection is rendered moot. Applicant respectfully~~
requests withdrawal of the rejection.

Claim Rejections – 35 U.S.C. §§ 102(b) and 103(a)

Claims 1-11 and 14-15 are rejected under 35 U.S.C. §§ 102(b) and 103(a) as being anticipated by, and unpatentable over, Freyne et al (EP 0987265). (Office Action mailed May 7, 2003 at 5-7).

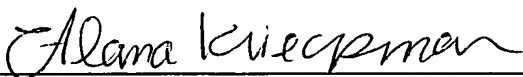
Applicant asserts that the instant application is entitled to the priority date of U.S.S.N. 10/049,038, to which the instant application claims priority as a continuation-in-part application, and consequently EP 0987265 does not qualify as a § 102(b) or § 103(a) reference. Applicant asserts that the only distinction between the instant application and U.S.S.N. 10/049,038 is the inclusion in the instant application of Scheme 3 on page 47, line 1. U.S.S.N. 10/049,038 refers to Scheme 3 (see page 46, lines 16-17) but omits the scheme drawing. The text following Scheme 3 in the instant application (see page 41, line 3 et seq.) is included in U.S.S.N. 10/049,038 (see page 47, line 18 et seq.)

Accordingly, Applicant respectfully requests withdrawal of the rejections under §§ 102(b) and 103(a).

Conclusion

Applicants respectfully request that a timely Notice of Allowance of claims 1-11 and 14-15 be issued in this case. The Examiner is cordially invited to contact the undersigned with any questions regarding this application. The Commissioner is hereby authorized to charge any fees or deficiencies due or credit any overpayment to Deposit Account No: 10-0750/JAB-1561/AGK. This page is submitted in triplicate.

Respectfully submitted,

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Dated: November 7, 2003

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Accordingly, Applicant respectfully requests withdrawal of the rejections under §§ 102(b) and 103(a).

Conclusion

Applicants respectfully request that a timely Notice of Allowance of claims 1-11 and 14-15 be issued in this case. The Examiner is cordially invited to contact the undersigned with any questions regarding this application. The Commissioner is hereby authorized to charge any fees or deficiencies due or credit any overpayment to Deposit Account No: 10-0750/JAB-1561/AGK. This page is submitted in triplicate.

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